

Phan (Migration) [2020] AATA 5701 (20 August 2020)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mr Tho Phan

CASE NUMBER: 1722859

DIBP REFERENCE(S): CLF2014/89815 OSF2008/053794

MEMBER: Nicholas McGowan

DATE: 20 August 2020

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Migrant) (Class BC) visa.

Statement made 20 August 2020 at 10:32am

CATCHWORDS

MIGRATION – Partner (Migrant) (Class BC) visa – Subclass 100 (Spouse) – Federal Court remittal – sponsor passed away – living arrangements not consistent with them having a genuine and continuing relationship – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5, 65, 338, 347, 362A, 368, 375A
Migration Regulations 1994 (Cth), r 1.15, Schedule 2, cl 100.221

CASES

He v MIBP [2017] FCAFC 206

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

REVIEW

1. This statement fulfils the Tribunal's obligations under the Migration Act: s.368.
2. The visa applicant ('applicant') is a Vietnamese citizen, born 20 October 1964, who applied for the temporary and permanent partner (subclass 309/100) visas on 17 June 2008.
3. Evidence of the applicant's age, identity and nationality is evidenced by the copy of his national passport found at folio 31 of the Department of Immigration and Border Protection (DIBP) file CLF2014/89815.
4. The application was made on the basis the applicant was the spouse of his sponsor Ms Thi Be Tam Dang, born [date]. The sponsor's Australian citizenship, age and identity can be evidenced by a copy of her Certificate of Australian Citizenship at folio 8 of DIBP file OSF2008/053794, and a copy of her Australian passport (and Victorian Driver Licence) contained at folios 32-33 of DIBP file CLF2014/89815.
5. On 17 March 2009 a delegate for the Minister for Immigration refused to grant the applicant the Subclass 309 visa. The Minister's delegate refused to grant the Subclass 309 visa because he was not satisfied that the applicant and sponsor were in a genuine and continuing spousal relationship.
6. The applicant appealed the refusal decision to this Tribunal. On 22 September 2010 the Tribunal (differently constituted) found the applicant meet clauses 309.211 and clause 309.221 and 309.223 of Schedule 2 of the Regulations.
7. On 16 February 2011 the applicant was granted the temporary partner (subclass 309) visa and subsequently entered Australia on 2 March 2011.
8. As the temporary 309 Subclass visa is the first step in a two-step process (the second being the granting of a permanent Subclass 100 visa) the Department undertook an assessment of the *bona fides* of the claimed relationship, including conducting a site visit on 12 June 2014 conducted by Immigration Integrity Officers who visited the applicant's declared residential address of [Address 1]. The conclusion of the integrity report by the Officers was that the parties were not in a genuine spousal relationship, as it appeared they were not living together; they provided inconsistent information in respect to a number of matters including having a limited knowledge of each other's circumstances, notably the applicant had travelled to Vietnam for eight (8) weeks in March 2014 without telling his sponsor (and wife), in addition to the applicant's claim he often spent time at his friends' homes because of relationship difficulties with his wife.
9. On 17 October 2014, the delegate for the Minister for Immigration refused to grant the applicant the permanent partner (subclass 100) visa as the delegate was not satisfied the applicant was the spouse of his sponsor as required under the law.

10. CONSIDERATION OF CLAIMS AND EVIDENCE

11. On 31 October 2014, the applicant appealed the DIBP Subclass 100 visa refusal decision (dated 17 October 2014) to this Tribunal.
12. At that time, a copy of the DIBP refusal record was provided to the Tribunal by the applicant.

13. The Tribunal (differently constituted) invited the applicant to attend the public hearing on 1 December 2015 because the Tribunal had considered the material before it and had been unable to make a favourable decision on that information alone.
14. The Tribunal (differently constituted) affirmed the DIBP refusal decision (of 17 October 2017) on 7 December 2015 (case number 1417868).
15. On 20 September 2017, in Melbourne, the Federal Court (File No: MLG23/2016) Ordered by Consent that a writ in the nature of *certiorari* be issued to quash the decision in the case 1417868 (dated 7 December 2015).
16. The Court found the Tribunal fell into jurisdictional error by failing to provide the applicant a meaningful hearing, as the Tribunal did not release folios requested by the applicant in accordance with section 362A of the Act. Specifically, the Tribunal did not release folios 54-56 and 71-90 of OSF2008/053794 and folios 47-70, 94-99 and 102-114 of CLF2014/89815 on the basis they were excluded from release because they were subject to a certificate purportedly made under section 375A of the Act. The Tribunal, before the Court, conceded that the certificate purportedly made under section 375A of the Act (which appears at folio 146 of CLF2014/89815) was invalid, and the folios (documents) subject to the certificate were accordingly, not properly excluded from release to the applicant under his request made in accordance with section 362A of the Act.
17. Under Section 360 of the Migration Act the applicant must be invited to appear before the Tribunal, except in limited circumstances which are not applicable in this matter.
18. On 23 May 2019, the Tribunal wrote to the applicant and invited him to appear before a public hearing scheduled on 4 July 2019 to provide evidence and present arguments.
19. The applicant was invited to attend the public hearing because the Tribunal had considered the material before it and had been unable to make a favourable decision on that information alone.
20. On 2 July 2019 the applicant advised the Tribunal in a letter from his representative dated 1 July 2019 that his sponsor had died on 20 April 2019 due to a sudden illness whilst being married to the applicant. The letter was accompanied by a statutory declaration dated 21 June 2019 signed by the applicant and declaring the death of his wife on 20 April 2019, and further declaring that at the time of his sponsor's death, he and his wife were in a married relationship.
21. At the hearing conducted 4 July 2020 the Tribunal confirmed the applicant had not received the folios identified by the Court. Accordingly, the Tribunal undertook to provide all the folios covered by the Court Order to the applicant with haste, and adjourn the review, until such time the applicant had considered the information.
22. Further, during the hearing of 4 July 2019, the Tribunal carefully considered each of the matters contained under Regulation 1.15A, and section 5F of the Act, questioning the applicant and providing an opportunity for him to provide any evidence or argument. The Tribunal made it clear to the applicant he would be provided with a further opportunity to provide any evidence whatsoever, post-hearing.
23. On 27 August 2019, the Tribunal provided to the applicant all folios covered by the Court Order, including a number of pages which contained copious handwritten notes that had been enveloped at folio102.

24. For the record, no adverse weight has been placed on the documents released, in-part, because much of the information has already been provided by the applicant himself to the Tribunal, and in addition, because none of the other information (which has not been specifically discussed in this decision) has been viewed as adverse by the Tribunal in the circumstances of this matter.
25. A resumed hearing into the review was conducted (and completed) on 17 September 2019 at which the applicant was also provided with a further opportunity to provide any evidence, including in response to the information contained in the folios released by the Tribunal on 27 August 2019.
26. At the 17 September 2019 resumed hearing, the applicant provided the Tribunal with a copy of his wife's death certificate (number 4427760/2019) registered 6 May 2019, recording the sponsor's death as having occurred on 20 April 2019 at [Address 1]. The certificate states the relationship status at death as 'married'. As such, a certificate is the product of self-reporting, in this case by the applicant, little weight can be given to this document as evidence of anything other than a record of death for the sponsor, for which the Tribunal clearly accepts this.

27. Criteria to be satisfied at the time of decision

28. In instances where an applicant is no longer sponsored for the purpose of their partner (Subclass 100) visa, the law specifies a number of 'exceptions' which allow an applicant to progress their partner visa application in the absence of their sponsor.
29. The criteria to be satisfied at the time of decision is contained in regulation 100.22: r.100.221(1).
30. Relevantly, the applicant claims to meet the criteria under r.100.221(3)(a), (b) and (c).
31. The applicant has sought to rely on the 'exception' under r.100.221(3) which permits the grant of a permanent partner Subclass 100 visa, notwithstanding his sponsor's is deceased.
32. As the sponsor's child is an adult, and there has been no claim of any family violence perpetrated by the sponsor against the applicant, the Tribunal is satisfied the only 'exception' available to the applicant is the one he has claimed he meets: r.100.221(3).
33. As the applicant and sponsor were lawfully married in Vietnam on 23 April 2006 (and have provided evidence of the validity of their marriage: including a copy of their marriage certificate contained at folios 24-25 of DIBP file OSF2008/053794 - the validity of which has been accepted previously by the DIBP in their Subclass 309 refusal decision of 17 March 2009 - and the validity of which the Tribunal accepts at face value based on all the evidence) the key requirements for the 'death of the sponsor' exception for the Subclass 100 visa are contained in r.100.221(3):

(3) The applicant meets the requirements of this subclause if the applicant:

(a) first entered Australia as the holder of a Subclass 309 (Partner (Provisional)) visa and continues to be the holder of that visa; and

(b) would meet the requirements of subclause (2) or (2A) except that, after the applicant first entered Australia as the holder of the visa mentioned in paragraph (a), the sponsoring partner has died; and

(c) satisfies the Minister that the applicant would have continued to be the spouse or de facto partner of the sponsoring partner if the sponsoring partner had not died.

34. The Tribunal notes subclause (2A) of r.100.221 in respect to consideration of r.100.221(3)(b), is not applicable in this matter.
35. The Tribunal is satisfied the applicant meets r.100.221(3)(a) as DIBP records confirm the applicant first entered Australia on 2 March 2011 as the holder of a Subclass 309 visa (which was granted on 16 February 2011), and the applicant continues to be a holder of the Subclass 309 visa at the time of this decision. Accordingly, the applicant meets r.100.221(3)(a).
36. Given all the above, and relevantly in this case, the question is whether the applicant satisfies the criteria specified under r.100.221(2)(b) for the purposes of r.100.221(3)(b) and (c).
37. 'Spouse' is defined in s.5F of the Act: s.5F(2)(a)-(d), If they are validly married, they may meet the requirements of a spousal relationship.
38. The Tribunal must consider all the circumstances of the relationship (including the matters specified in r.1.15A(3)) in determining whether the parties are in a "married relationship" as defined by s.5F(2).
39. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.
40. **Are the other requirements for a spouse relationship met?**
41. The Tribunal considered each aspect, including during the hearing conducted 4 July 2019 and resumed 17 September 2019. The Tribunal has had regard to all the evidence of the relationship - provided throughout the course of the applicant's application, and importantly, carefully considered the evidence in respect to the circumstances of the claimed spousal relationship prior to the sponsor's death.
42. Each of the specific matters contained in r.1.15A(3) are as follows:
 43. (a) the financial aspects of the relationship, including:
 44. (i) any joint ownership of real estate or other major assets; and
45. The parties had outlined the history of their relationship throughout the application process, including detailing the costs of their marriage in Vietnam, and how those costs were shared between the two families and their respective parents.
46. The applicant and sponsor have told the Tribunal they have a joint bank account and that the applicant would draw cash from that account as either of them required. Evidence of the joint account has been provided to the Tribunal (previously constituted).
47. The applicant told the Tribunal he and his sponsor used cash for almost all transactions. The applicant told the Tribunal his sponsor was also able to draw on her Centrelink payments, though he never enquired as to the amount she received from Centrelink, as he viewed that information as her own business.

48. The applicant told the Tribunal during the hearing of 4 July 2019 that he and his sponsor had no joint property, and no major assets.
49. The applicant outlined for the Tribunal how he was the only breadwinner in the relationship.
50. The applicant told the Tribunal his sponsor had owned a car, a Toyota. When discussing other matters (later in the hearing) the applicant added that he and his sponsor had saved in the order of \$20,000.00 jointly. The applicant told the Tribunal the money was still in their joint account. The applicant (and his representative) were asked by the Tribunal to provide a copy of a statement which would corroborate his claim in respect to the savings he says he and his sponsor accumulated in with their bank (and which the applicant claimed was for the purpose of saving for a home of their own).
51. At the time of this decision, no statement (or other document evidencing the claim) has been provided, though significant time (post-hearing) has passed, including further contact from the Tribunal with the applicant's representative on 17 August 2020 inviting the applicant to provide any additional evidence whatsoever (prior to a decision being made).
52. At the time the sponsor died, the evidence from the applicant is that they had no joint ownership of real estate or other major asset, outside the claimed savings of \$20,000.000 which was not substantiated.
53. As the claim in respect to the savings has not been corroborated with any documentary evidence, the Tribunal places no weight on that claim.

54. The absence of any joint real estate or major assets, particularly where the parties have been married for some 13 years, are not circumstances which the Tribunal finds supports the applicant's claim he was in a married relationship with his sponsor.

55. (ii) any joint liabilities; and

56. The applicant told the Tribunal he and his sponsor had no joint liabilities. The Tribunal enquired further, and the applicant responded by making it plain that he and his sponsor had no joint liabilities, no loans, or other liabilities, to any individual or institution (bank).

57. The absence of any joint liabilities after some 13 years of marriage is not a circumstance which the Tribunal finds supports the applicant's claim he was in a married relationship with his sponsor.

58. (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and

59. The applicant and sponsor claimed to have shared between their families the cost of their wedding some 13 years ago. Though the cost amounts varied between what the applicant and his sponsor told the Minister's delegate, the applicant later explained that this was because the sponsor had not included all the costs which he had accounted for in totalling the full cost of their marriage. The Tribunal placed no weight on the fact there was a variance in the cost details provided, given the applicant's explanation.
60. Outside their actual marriage, the applicant and sponsor maintained they lived largely within a 'cash economy' where they either drew money from their joint account, as required, and made small cash purchases; or, the sponsor drew her own funds from her own bank account drawing from her Centrelink payments. The applicant has not provided the Tribunal with any recent and verifiable proof of any of their transactions from any of their bank accounts.

61. In these circumstances, the Tribunal finds that the extent of pooling of financial resources is minimal, possibly even non-existent, particularly at the time of the sponsor's death. There is no recent documentary evidence to corroborate the applicant's generic claims in regard to even the smallest pooling of finances from their respective bank accounts.

62. Further, and relevantly, there's no evidence of pooling of financial resources in relation to any major financial commitments throughout the entire relationship, outside their initial marriage in Vietnam in 2006, which didn't appear to require pooling so much as a contribution from each of them, or their families, to pay for the associated costs.

63. *The absence of joint pooling of financial resources (and especially in relation to major financial commitments) after some 13 years of marriage are not circumstances which the Tribunal finds supports the applicant's claim he was in a married relationship with his sponsor.*

64. (iv) whether one person in the relationship owes any legal obligation in respect of the other; and,

65. The applicant told the Tribunal neither he, nor his sponsor, owed a legal obligation to the other outside their marriage.

66. *The Tribunal accepts the parties are married, and that that marriage was a significant event for the couple as outlined in their personal statements and accompanying documentary evidence of the occasion (photographs for example, and evidence the sponsor's parents travelled to Vietnam to participate in the wedding) and its meaningfulness. The Tribunal finds the legal obligation of marriage in this case supports the claim the applicant and sponsor were in married relationship.*

67. (v) the basis of any sharing of day-to-day household expenses; and

68. The oral evidence from the applicant is that he and his sponsor relied principally on his income to support their day-to-day household expenses, but that the sponsor also received some income from Centrelink which she used from time-to-time. No recent financial documents have been provided to the Tribunal, including statements from any bank account, which might assist in verifying the applicant's, or his sponsor's previous claims.

69. *The absence of recent evidence for the basis of any sharing of day-to-day household expenses, are not circumstances which the Tribunal finds supports the applicant's claim he was in a married relationship with his sponsor.*

70. (b) the nature of the household, including:

71. (i) any joint responsibility for the care and support of children; and

72. The applicant and her sponsor have no children together, though the sponsor has an adult son. The applicant has claimed he has an ongoing relationship with his sponsor's son, though the Tribunal has no recent or verifiable documentary or oral evidence from the son in respect to the claimed relationship between them. The applicant appeared to have a cursory understanding of his sponsor's adult son when asked about him during the Tribunal hearing of 4 July 2019. For example, while the applicant said his sponsor's son was studying, he did not know with which institution his son was enrolled. Based on the applicant's knowledge of his son, and account of his involvement in his life, the Tribunal is satisfied the applicant does not have responsibility (including 'joint') for his care and support.

73. *The absence of any responsibility for the care and support of the sponsor's adult child, is not a circumstance which the Tribunal finds supports the applicant's claim he was in a married relationship with his sponsor.*

74. (ii) the living arrangements of the persons; and

75. The applicant claims to have lived with his sponsor since he arrived in Australia from 2011 until her death in 2019.

76. According to the applicant, at the time of the sponsor's death, she was staying at her mother's home in [Address 1]. The applicant told the Tribunal she was staying at her mother's because he had to work, and she didn't want to be alone in the bungalow they rented and lived together in [Address 2] (since 2014).

77. In the period prior to 2014, the applicant told the Tribunal he and his sponsor had lived with the sponsor's parents in their home at [Address 1].

78. The applicant has told the Tribunal (differently constituted) that he lived with his sponsor's parents for one year after he arrived in Australia, though his relationship with them was not good for a number of reasons. The applicant told the Tribunal that it was during a site visit by Immigration Officers of the DIBP that he and his sponsor were living apart – for around six months - from March to September 2014 - due to tensions between himself and his in-laws and sponsor. The applicant told the Tribunal that eventually he convinced his sponsor to live with him away from her family, and she moved-in with him in the bungalow in [Address 2]. The site-visit by DIBP to the applicant's claimed place of residence ([Address 1]) in 2014, coincided with the period the applicant told the Tribunal he'd left the sponsor in her parents' home, and unbeknownst to her, he'd travelled back to Vietnam. The information from the site-visit is contained in the decision record the Tribunal has been provided by the applicant, and so has not been formally put. Moreover, the applicant himself has provided oral evidence of the deteriorated state of his relationship with his sponsor during that time.

79. *Notwithstanding all the above, and accepting at face value the sponsor was only visiting her parents for a couple of days (at her time of death) though usually living with the applicant in the [Address 2] bungalow as he claims, the applicant has not actually provided recent and verifiable evidence that he and his sponsor were actually living together at [Address 2] at the time she died, or for any significant period prior. For these reasons, this is not a circumstance which the Tribunal finds supports the applicant's claim he was in a married relationship with his sponsor*

80. (iii) any sharing of the responsibility for housework; and

81. The applicant told the Tribunal that since he rented the bungalow, the housework is minimal, and not important.

82. *Given the above, it follows that the extent to which a conclusion can be reached on this consideration is limited. That said, even were the Tribunal to accept the parties shared responsibility for the housework required when they were living together, it is a circumstance which the Tribunal finds (in the circumstances outlined by the applicant) only minimally supports the applicant's claim he was in a married relationship with his sponsor.*

83. (c) the social aspects of the relationship, including:

84. (i) whether the persons represent themselves to other people as being married to each other; and

85. The wedding of the parties, and attendance by their parents, was strong evidence the parties did represent themselves as being married to each other at that time. A small number of 888 Forms on file also speak to some broader, earlier, recognition of the way the parties represented themselves as being married to each other.

86. The absence of recent evidence in the months leading up to the sponsor's death in 2019, lead the Tribunal to conclude this circumstance is not one which the Tribunal finds supports the applicant's claim he was in a married relationship with his sponsor.

87. (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and

88. A small number of 888 Forms on file speak to some broader, earlier, opinion of friends and acquaintances about the nature of the applicant and sponsor's relationship. Significantly however, each of these supporting statements are highly vague and do not provide significant insight beyond their broad claims - that the applicant and sponsor are in a genuine relationship.

89. In addition, a statement from the applicant's landlord dated 26 November 2015 was also provided and spoke about the applicant and sponsor, though when the landlord's written-words were put to the sponsor (in a hearing of the Tribunal differently constituted) she appeared to have no knowledge of the landlord. The information was put formally to the applicant, who explained to the Tribunal (differently constituted) that the relationship was with himself and not his sponsor. In the circumstances, the Tribunal places no adverse weight on this historic reference, though it also places no positive weight on it for the same reason.

90. The minimal evidence in support of this consideration previously, and the absence of recent evidence in the months leading up to the sponsor's death in 2019, lead the Tribunal to conclude this is not a circumstance which the Tribunal finds supports the applicant's claim he was in a married relationship with his sponsor.

91. (iii) any basis on which the persons plan and undertake joint social activities; and

92. The applicant claimed he and his sponsor would sometimes go out for dinner with friends, or that sometimes they would invite friends to have dinner with them. The applicant and sponsor have provided some photographic evidence in support of this claim, which indicates they interacted with each other in social settings. Nonetheless, previously and recently, the oral and documentary evidence describing or outlining the basis for any plan the applicant and sponsor had, or joint activities they planned to undertake, did not extend beyond those described above.

93. The absence of evidence in the months leading up to the sponsor's death in 2019 (of any basis on which the applicant and sponsor plan and undertake joint social activities), leads the Tribunal to conclude these are not circumstances which the Tribunal finds supports the applicant's claim he was in a married relationship with his sponsor.

94. (d) the nature of the persons' commitment to each other, including:

95. The applicant has, and sponsor had, provided various statements in respect to their claimed commitment to each other. In circumstances where the sponsor has died, it is difficult to assess this circumstance, particularly in respect to the period after the sponsor's last appearance before the Tribunal (previously constituted in 2015).

96. At face value, the Tribunal accepts the parties had a commitment to each other, but on the evidence provided the Tribunal has not been satisfied as to the actual nature of their commitment, in large measure because of the absence of recent evidence for a significant time prior to the sponsor's death.

97. Accordingly, this is not a circumstance which the Tribunal finds supports the applicant's claim he was in a married relationship with his sponsor.

98. (i) the duration of the relationship; and

99. The applicant and sponsor had been married since 23 April 2006.

100. This is a circumstance which the Tribunal finds (in the circumstances outlined by the applicant) minimally supports the applicant's claim he was in a married relationship (according to the Act) with his sponsor.

101. (ii) the length of time during which the persons have lived together; and

102. Given all the evidence, the Tribunal has reasonable doubts the applicant and his sponsor were living together at the time the sponsor died. The Tribunal accepts they had lived together for around a year after the applicant arrived in Australia - and lived together again for a period after the site-visit by the DIBP. However, as the applicant's own evidence is that at the time of sponsor's death she was staying at her parents house (for two days), the Tribunal finds it quite plausible the sponsor may have been living with her parents more than she was living with the applicant.

103. In such circumstances, the Tribunal finds the length of time the applicant and his sponsor have lived together only partially supports the applicant's claim he was in a married relationship with his sponsor.

104. (iii) the degree of companionship and emotional support that the persons draw from each other; and

105. The applicant and sponsor have provided statements and oral evidence to the Tribunal and DIBP in respect to the degree of companionship and emotional support they drew from each other.

106. The applicant, during the Tribunal hearing of 4 July 2019 expanded on the emotional support and degree of companionship he drew from the sponsor. However, the Tribunal is mindful it has no recent and verifiable evidence whatsoever from the sponsor as to the degree of companionship and emotional support she drew from the applicant, if any, for some considerable time prior to her death.

107. In this respect, the applicant has not satisfied the Tribunal that the degree of companionship and emotional support they drew from each other supports the applicant's claim he was in a married relationship with the sponsor.

108. (iv) whether the persons see the relationship as a long-term one.

109. The applicant maintains his sponsor took care of him, as he took care of her. However, the Tribunal is mindful it has no recent evidence whatsoever from the sponsor as to whether she saw the relationship as a long-term one, at least, prior to her death.

110. *The available evidence from the applicant and the sponsor, specifically latterly, does not support the applicant's claims he and his sponsor saw their relationship as a long-term one.*

111. Having considered above the circumstances of the relationship, including the matters set out in sub-regulation 1.15A(3), the Tribunal makes the following findings.

FINDINGS

112. Considering all the evidence before it, the applicant has not satisfied the Tribunal that the above circumstances demonstrate a commitment to a spouse relationship for the purposes of s.5F(2).
113. The Tribunal is not satisfied the applicant and sponsor had a mutual commitment to a shared life as husband and wife to the exclusion of all others, and that the relationship was genuine and continuing. Therefore, the applicant does not meet the requirements of s.5F(2)(b) and s.5F(2)(c) for a married relationship.
114. It follows, the Tribunal has not been satisfied by the applicant that he would have continued to be the 'spouse' of the sponsoring partner if the sponsoring partner had not died. The applicant therefore has not satisfied r.100.221(3)(b) and (c).
115. Given the above, the applicant does not satisfy r.100.22 at the time of decision.
116. For the reasons outlined, the applicant does not satisfy the criteria for the grant of the visa.
117. As part of the Tribunal's initial considerations in this review, the Tribunal formed the view, and makes the finding, that the delegate's decision dated 17 October 2014, is an MRT-reviewable decision under s.338(2) of the Act, and that the applicant has made a valid application for review under s.347 of the Act.
118. As required under section 368(3)(b) of the Act, the Tribunal will provide to the Secretary a copy of the new documentary evidence on which material findings of facts are based.

119. DECISION

120. The Tribunal affirms the decision not to grant the applicant a Partner (Migrant) (Class BC) visa.

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